The Beginning of the End of the Punishment Imperative

America’s criminal justice system has deteriorated to the point that it is a national disgrace. Its irregularities and inequities cut against the notion that we are a society founded on fundamental fairness. Our failure to address this problem has caused the nation’s prisons to burst their seams with massive overcrowding, even as our neighborhoods have become more dangerous. We are wasting billions of dollars and diminishing millions of lives.

—Senator Jim Webb, March 3, 2009

In the early 1970s, the United States embarked on a subtle change in the way it punished people for crimes. The prison population, stable for half a century, shifted upward. At first, this was little noticed, so much so that even as the number of people behind bars was inching upward, prominent criminologists were hypothesizing that there was an underlying stability to the use of imprisonment across the United States. By the end of that decade, the change was no longer subtle, and commentators began to describe a new harshness in the U.S. attitude toward crime and justice.

In the next chapter, we tell the story of the special character of American punitiveness. It is an extraordinary story of remarkable raw numbers that are all the more astonishing for the way we have gotten used to them. As we shall show, nowhere else in the democratic world, and at no other time in Western history, has there been the kind of relentless punitive spirit as has been ascendant in the United States for more than a generation. That relentless punitive spirit is the philosophy—the
The short story is that this “new” attitude has become old; the punitiveness of the 1970s was nothing compared with the years to come. For the next forty years, virtually every aspect of the punishment system, from the way people were processed before trial to the way people were confined after conviction, grew harder. Like a drunk whose life descends increasingly into the abyss, U.S. penal policies grew steadily and inexorably toward an ever harder edge. Thresholds of punitiveness people never thought our democracy would ever have to confront became a part of official policy: life without parole and death penalties for young people; lengthy detention before trial; humiliation and long periods of extreme isolation during confinement; decades behind bars for minor thefts and possession of drugs. Such developments would have been unthinkable in the 1960s, but they would become the leading edge of penal reform in the years that followed.

We argue that it is useful to think of this period in U.S. penal history as a kind of grand social experiment that we call “the Punishment Imperative.” As we will argue in more detail in chapter 3, the Punishment Imperative began with the co-alignment of an array of forces that came together to make the explosive growth in the penal system a social and political possibility. A decade of rising crime rates fueled public alarm about basic safety, and crime also came to stand as a symbol for the disruption of standing patterns of entitlement and privilege. Media attention to victimizations by those who were formerly incarcerated fueled national sympathy for a victims’ rights movement in the criminal justice system. A nonpartisan consensus developed that addressing crime and fear of crime was a high political priority. The emergence of a large pool of young black men who were unconnected to the labor market provided a group that could serve as a symbolic enemy around which to rally political forces and carry out a “war,” but they were also a tangible target group that required some form of practical social control. The political economy made get-tough politics a successful strategy. Economic growth made penal-system investment possible, and working-/
middle-class job creation resulting from that growth provided further energy for an ever growing penal system.

Certainly, the story of the Punishment Imperative can be (and has been) told with different emphases and redirected nuances, but any version of the story will have to offer some aspect or another of the scenario above. The times came together to enable a great, though poorly articulated, social experiment in expanded social control. It has now been going on for almost forty years.

As we write, there are signs—strong signs—that the experiment is coming to an end. As we will argue, a combination of political shifts, accumulating empirical evidence, and fiscal pressures has replaced the commonsense idea that the system must be “tough” with a newly developing consensus that what has happened with the penal system can no longer be justified or sustained. Without fanfare, the results of the great punishment experiment have begun to come in, and they are in ever so many ways disappointing. The emotional and practical energy for punitive harshness, seemingly irresistible just a short time ago, now is oddly passé.

Indeed, the entire corrections system is, for the first time in more than a generation, shrinking. In the years 2009 and 2010, the number of people in both prisons and jails dropped—about 2 percent each year. In 2009, the number of people on probation and parole also dropped (about 1 percent), meaning that in 2010, for the first time in thirty-eight years, the number of people under correctional authority at the end of the year was smaller than the number at the beginning of that year.4 This marks, we think, the unofficial “end” of the Punishment Imperative.

This book, then, is about the rise and fall of the Punishment Imperative. Volumes have been written about what the world has come to see as the special American punitiveness.5 No other nation can tell quite the same story. What makes our retelling of this story useful, we hope, is that we offer it at a significant moment in the narrative of that story—its waning. Our plan is not just to document the character of the special American punishment era but also to show how its development, over time, produced the dynamics that inevitably fueled its conclusion.
This is not to say, of course, that the special American punitiveness has stopped in the same way one turns off an overhead light. The public sentiment for harsh treatment of people who break the law remains deeply seated in the political mind and social character of the nation. Moreover, the consequences of American punitiveness run far too deep and spread far too broadly to be easily discarded. Given these realities, the end of the grand experiment will feel less like a lightbulb being turned off and more like the slow cooling of a white-hot oven.

In fact, the waning of the punitive ethic has been going on for a while. At its height, in the 1980s, the correctional growth rate was typically as high as 8 percent per year or higher, but we have not seen that kind of growth rate for more than a decade. For the last ten years or so, the system has been more likely to grow at around 2 percent a year. This is the statistical evidence that suggests we have reached a watershed point in U.S. correctional history, when the steady rise in imprisonment shifts to a steady—if less steep—decline. The decline in the overall correctional population is but the current realization of a longer trend, in which the steam behind the Punishment Imperative has been declining for some time. Indeed, today’s drop in correctional populations is consistent with a gradual decline in growth that has been going on since at least the beginning of the 2000s. The so-called fall, then, of the punishment agenda has been going on for some time, but its existence was masked by the fact that numbers continued to grow even as the energy for growth was dissipating.

In just the past couple of years, it seems we have reached a turning point in discourse around mass incarceration in particular. For many years, scholars of penology published books describing and seeking to better understand the impetus for the growth in punishment that resulted in mass incarceration. Scholarly attention then turned to documenting the deleterious effects of mass incarceration for individuals, families, and communities—with scholars documenting the ways in which mass incarceration had a tendency to exacerbate some of the most vexing social problems of our times. Today, though, we are increasingly seeing scholars write about reducing our reliance on incarceration and
offering strategies for accomplishing meaningful reductions in prison populations without compromising public safety. And scholars are not the only ones with voices in this chorus. Journalists too have begun to publish feature stories profiling people and places that are trying to move away from incarceration and find new or innovative ways to deal with crime when and where it occurs. Politicians are increasingly less concerned with coming across as “tough on crime” and more inclined to talk about ways to be “smart on crime.” Federal legislation passed in recent years has a remarkably different character than legislation passed just one decade earlier. Policymaking in the penal arena no longer consists solely of new ideas for increased punishments. Ideas in good currency today often emphasize lesser punishments as ways to improve public safety.

The special American punitiveness, ascendant for more than a generation, ran so deeply in the political culture that it still resonates, and many (if not most) people would find it odd to suggest that it is a phenomenon in decline. But it is, in fact, the current political shifts that offer the most convincing evidence that something has changed. In the last three presidential elections, crime has scarcely been an issue. This pattern has been repeated in gubernatorial and other electoral campaigns. States such as Louisiana and Mississippi that reveled in their own homegrown, “get-tough” politics now lead the nation in prison downsizing. Their governors announce prison reduction programs, including release programs that would have been unthinkable a decade ago. There was a time when even a hint of a policy that might have resulted in prison releases or reductions in sentencing would have spelled certain political death. Today, at least thirteen states are closing prisons after reducing prison populations. That this kind of policy is no longer political anathema is a leading indicator of how much has changed.

What this brief discussion shows is that the Punishment Imperative was a policy experiment. Without question there were changes in the dynamics of crime, but they were tangential to the profound changes in crime policy described in chapter 4 that have dominated the American criminal justice scene for nearly forty years. What happened was
a deliberate, if haphazardly conceived, agenda of more and more punishment—a Punishment Imperative. Precisely because this was a policy agenda, rather than some sort of social circumstance, we are able to analyze this time in American history using the grand social experiment framework.

In the remainder of this chapter we describe what we think of as the end of the great penal experiment that took place between 1970 and 2010 and outline the prospects for something new to emerge—something with far less emphasis on prisons and much more emphasis on a conglomerate of correctional approaches. We argue that we have reached an era in which a new milieu is fueling the prison populations and penal system. Although we offer a fuller version of what we think that new model might look like in our concluding chapter, the short version would probably read something like this:

*The worldwide economic crisis of 2008 has created pressure on U.S. state and local governments to reduce their costs. One of the fastest-growing costs is the prison system, and so there is impetus to control prison costs—and that means reducing the number of prisoners. There is bipartisan agreement that controlling prison costs is an important immediate objective. Because crime has been dropping nationally for more than a decade, the get-tough movement has lost some of its salience with the public (and therefore the politicians). There is a new bipartisan consensus that improving postrelease success for people who leave prison is a high priority, and this has created public support for reentry programs. A plethora of news media stories and social science studies about mass incarceration and the plight of people who have been to prison has balanced the national appetite for victims’ rights with a sentiment that the system has gotten out of control. There is growing belief that the “drug war” has been, if not a complete failure, then at least a mistake. Increasingly, there is a call for correctional programs to be based on “evidence” rather than ideology. One of the most popular new national programs is “justice reinvestment,” which seeks to control the rising costs of prisons and invest the savings in projects that will enhance, rather than further damage, communities.*
Justice reinvestment, the emerging model we advocate for in the concluding chapter, offers a new framework for the penal system to approach its work. To the extent that justice reinvestment—or something like it—becomes dominant, it signals a new era: the end, if slow and vacillating, to the grand penal experiment.

The End of an Era: Evidence from the Field

We do not have to look far to see strong evidence that a new conversation has taken hold in penal policy circles. As we write, evidence mounts daily that the experiment is grinding to a halt. As of August 2011, at least thirteen states—one-fourth of the states—have closed or plan to close a prison.13 Michigan has already closed twenty-two prisons, and even the notoriously punitive state of Texas plans to close a 100-year-old prison. New York State, after a series of reforms that roll back the reach of the incredibly harsh Rockefeller Drug Laws, now plans to close seven prisons.14 This is a trend that, in many ways, is stronger in traditionally very conservative states than in what most people think of as more liberal states.15

Great examples are provided by the states of Mississippi and Georgia.16 Between 1997 and 1999, Mississippi opened seven new prisons. Soon after, the state’s prisons and jails became so overcrowded that local sheriffs were in crisis. By 2008, the corrections budget had tripled to $348 million, and the state was facing an additional increase in population of at least 20 percent. Then the 2008 recession hit, and from the governor on down, people knew something needed to be done. Plans were developed to reduce the prison population immediately with a goal of one-fifth reduction by 2013. The dominant driver is, of course, the current fiscal crisis.17 But, so far, the plan is politically popular, and the current cuts have been accomplished with both a drop in recidivism rates and no increase in crime rates.

Georgia has a similar story of unprecedented (and ultimately unsustainable) correctional growth.18 In the twenty or so years between 1990 and 2010, Georgia’s prison population more than doubled in size and
Georgia's incarceration rate became one of the highest in the nation. The state spent a staggering billion dollars a year on corrections, much of which was spent paying for the incarceration of nonviolent offenders (who account for close to 60 percent of the state prison population). To make matters worse, prison population projections based on the criminal justice policies in place predicted growth in the next five years that would require several hundred million dollars more in taxpayer dollars. A Special Council on Criminal Justice Reform for Georgians convened to study the factors driving prison growth concluded that very little of the growth could be explained by crime—almost all of the growth was explained by the series of policies that dictated who would go to prison (increasingly, nonviolent offenders) and how long they would stay (longer than they had previously). Moreover, recidivism rates among released offenders had not changed, and, while the substantial growth in incarceration might have enhanced public safety, alternatives to the most expensive form of correctional control for nonviolent offenders could potentially offer equal or greater public-safety returns at a substantial cost savings. In May of 2012, on the basis of the recommendations made by the council, Georgia's governor, Nathan Deal, signed a public safety reform bill (H.B. 1176) into law. Georgia's comprehensive criminal justice reform bill is expected “to avert all the anticipated growth in prison population and costs over the next five years.”

Nearly every state corrections system has some version of the Georgia or Mississippi story. The states are looking for ways to reduce spending, and that means—operationally—a reduction in the most expensive forms of correctional control: confinement (see table 1.1). We would be remiss if we did not acknowledge that some states (including Illinois, Arkansas, and Iowa) have seen continued (and sometimes substantial) increases in their prison populations in recent years. Indeed, some will no doubt argue that our prediction is premature. But a visit to the Council of State Government's Justice Center website shows that each new day, a new state story unfolds.

The number of states actively working to either close prisons or introduce legislation to ultimately reduce prison populations is
Table 1.1: State Efforts to Reduce Prison Populations

States that have recently closed or proposed to close prisons:¹

- Colorado
- Connecticut
- Florida
- Georgia
- Michigan
- Nevada
- New York
- North Carolina
- Oregon
- Rhode Island
- Texas
- Washington
- Wisconsin

States that have recently enacted criminal justice reforms designed to reduce prison populations:²

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Kentucky
- Louisiana
- Maryland
- Minnesota
- Missouri
- Nevada
- New Hampshire
- New Jersey
- New York
- North Carolina
- Ohio
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Texas
- Vermont
- Virginia


unprecedented—and most of this activity has taken place very recently, since 2010. It is too simplistic to say that the recession has been the sole cause of this shift and that when good times return, so will the nation’s previously insatiable appetite for prisons. In the high days of the grand penal experiment, there were also recessions, with the usual clarion call for fiscally responsible correctional practices. But they never affected the prison growth trajectory much. In the midst of some of the country’s toughest times in the 1970s and again in the 1980s, correctional systems seemed impervious to budgetary woes.
Moreover, the seismic shifts in the way punishment is now thought of are not simply housed in fiscal realities. For example, the Right on Crime movement, championed by some of the same Republican leaders who had been so captivated by the Punishment Imperative in prior years, is an express abandonment of the “punishment first” model of penal reform that dominated the scene for the last generation. But it is not simply a fiscal reform position. Arguing that the correctional system has grown way too big and way too onerous, it uses an appeal to fiscal realities to support its recommendations but also appeals to evidence, to common sense, and to ethical thinking. The Right on Crime Statement of Principles, written as it was by some of the most conservative political thinkers in the country, is evidence that the center of energy in the prison reform has moved away from the Punishment Imperative. The third paragraph of Right on Crime’s Statement of Principles explicitly addresses overreliance on incarceration:

Conservatives are known for being tough on crime, but we must also be tough on criminal justice spending. That means demanding more cost-effective approaches that enhance public safety. A clear example is our reliance on prisons, which serve a critical role by incapacitating dangerous offenders and career criminals but are not the solution for every type of offender. And in some instances, they have the unintended consequence of hardening nonviolent, low-risk offenders—making them a greater risk to the public than when they entered.

Given their exorbitant costs, prisons and prison spending have been identified as priority issues, with Right on Crime offering a number of conservative solutions to the problem of mass incarceration, several of which are expressly aimed at reducing prison populations. Likewise, Mark Kleiman’s study of Hawaii’s Opportunity Probation with Enforcement (HOPE), which argues for a strict model of probation enforcement, might seem at first blush to be more of the same Punishment Imperative thinking. Indeed, had it been written a decade ago, the book’s title might have been “Time to Get Tough with Probationers.”
Instead, Kleiman seeks to distinguish this work from the failed ideas of the past by using a provocative title: *When Brute Force Fails: How to Have Less Crime and Less Punishment.* The fact that a new intervention strategy that is based on the deterrence model is sold as “less” punishment is symbolic of where we are today. The Punishment Imperative has lost energy.

So while the current fiscal crisis is a motivating factor for the downsizing of the correctional system, it is not by itself the cause. The deescalation of punishment is possible mainly because the sentiment of punitiveness has undergone an important shift. Here are some of the forces that have contributed to that change in fundamental values.

**Falling Crime Rates**

If the 2008 recession provides the motivation for reducing the overall costs of the penal system, the decade-long drop in crime rates has enabled that conversation to take place. Broadly speaking, crime rates across the country have declined by 35 to 40 percent in the 1990s, led by a quite remarkable decline in New York City of more than 70 percent. Crime rates continued their relatively remarkable declines into and through the 2000s. In 2010, violent crime hit its lowest rate in forty years—in other words, violent crime rates across the United States are now generally lower than they were when the Punishment Imperative was launched. As we entered 2012, cities across the country were still reporting record declines in crime. In Los Angeles, for example, the crime rate hit its lowest level since 1952. Other large cities, including Boston, Chicago, and Dallas, also continue to report declining, and in some cases record low, levels of crime—particularly violent crime. To be sure, the drop in crime has not been uniform across all places. Some cities and states have been much slower to experience these changes or have experienced more moderate declines. But these fluctuating local experiences cannot deflect the major point: partly as a result of falling crime rates, crime has fallen off the main list of concerns Americans express in public opinion polls. And with crime out of the public mind,
a window of opportunity for real policy reform has now presented itself. The most remarkable illustration of this new state of affairs comes from the so-called red states (Georgia, Mississippi, Kansas, South Carolina, Texas, etc.), where tough crime policy has been a mainstay of political life for decades. These states have capitalized on the lack of angst about crime in the public mind to enact relatively sweeping sentencing and prison-reform initiatives.32

What this means is that the politics of crime is, to an extent not seen for a generation, on the back burner. Exceptions occur when significant criminal events hit the front pages of newspapers,33 and in cities where violence remains high, crime talk among political aspirants is significant. But there is no longer the overwhelming sense that a label of “soft on crime” is a mortal political liability.

The waning of crime from the political scene should not surprise us. There has been a gradual shift in this direction in national politics for a while. Bill Clinton de-toothed the issue with a range of policies that positioned him and his party as undeniably “tough on crime”: COPS funding, truth-in-sentencing legislation, and boot camps are representative examples. Indeed, many of the policies that have since served to make a prisoner’s return to the community all the more difficult (including housing and welfare restrictions that will be described more fully in chapter 4) were Clinton-era policies. Through these and other initiatives, Clinton was able to demonstrate that Democrats could be just as tough on crime as their Republican counterparts. While some of these Clinton initiatives have produced policy debacles from which states are still trying to recover, they were undeniably political winners. In the several presidential elections since *Clinton v. Bush* (1992), crime and public safety have received barely a mention in the campaign discourse. In the most recent 2012 election season, crime made an appearance only once during the presidential debates and that came during the “town hall” style debate when an undecided voter from the audience asked both Obama and Romney to address whether they supported an assault weapons ban.34 Crime and crime control are currently not priority issues for the American public and have not been for some time.35
All of this may change, of course, if crime rates start to rise again. And undoubtedly there is no political vaccination against the problems of crime and public safety. But what has seemed to be a political truism, what Jonathon Simon labels “governing through crime,” no longer seems as unflinchingly true. And even in the face of difficult criminal statistics and those random events that always seem to come along, the political reality is far more nuanced today than it has been for a generation. A main reason is the long, steady, and national drop in crime.

Reentry as a Concept

The symbolic power of the felon has also changed. Willie Horton remains one of the organizing stories in contemporary crime politics, and George H. W. Bush used visual images of the furloughed felon, a black-skinned repeat violent offender, to successfully chain his election opponent (Massachusetts governor Michael Dukakis) with racially provocative dead weight. One consequence of this political event is that we came to connect the fear of personal safety with the image of the violent felon whose black skin marked him as dangerous.

It is ironic, then, that Bush’s son, George W. Bush, put policies in place to soften this collective mindset. His landmark legislative effort to build a new foundation for people returning to the community from prison—the Second Chance Act—provided a new fiscal and programmatic infrastructure of services and support for people returning to the communities from prison. But it did more than that. It helped give standing to a new way to refer to the process of coming back from prison: reentry.

The production of the idea of “reentry” was a masterstroke of conceptual change. It reflects a nearly complete turn-around in the visualization of the problem. No longer do we refer to those people as “felons” or “parolees.” They are not seen as fixed entities defined by their past, law-breaking acts. They are instead to be seen as people in motion, people undergoing change—going through a process. They are “in reentry.” The term suggests that what these people face is a tough transition, a process that requires them to change the way they relate to the world
and to circumstances that will be different later on than they are today. The connotations of “reentry” are ever so preferable to what reformers had to work with when the dominant public idea was Willie Horton and the many dozens of similar images on the public mind. Reentry is more subtle, more dynamic, and opens the door to the idea of transition and, ultimately, redemption.40

While the Second Chance Act and the rhetoric surrounding it were a central source of the emerging power of “reentry,” this was not solely the work of George W. Bush. Several distinguished scholars, most notably Jeremy Travis (then director of the National Institute of Justice and now president of John Jay College of Criminal Justice) and Joan Petersilia (of Stanford Law School) made reentry the core concern of their research, writing noteworthy books on the topic.41 Research organizations, like the Urban Institute, made prisoner reentry one of their focal issues. The public organizations associated with this work, the American Probation and Parole Association (APPA) and the America Correctional Association (ACA), eagerly adopted the terminology of reentry in day-to-day practice, and mayors and governors opened up “Offices of Reentry.”

As often happens, in the end this simple change in terminology came to stand for a profound shift in thinking. Where we once saw “ex-felons and parolees” as problem people who need to be “controlled” in order for us to be protected, we came to see “people in reentry” as those who deserve a “second chance” and require support and services in order to “succeed.” The public mind shifted in subtle ways from the pessimistic problem of “dangerous classes” to a more hopeful idea of “potentially productive fellow citizens.” The power of this shift can be overstated, of course, but neither should it be underestimated. And the fact that it could happen is more evidence that the Punishment Imperative has run its course.

Evidence

Finally, it is becoming more widely accepted that the grand penal experiment has produced, at best, disappointing results. As our reviews in
chapters 5 and 6 will demonstrate, there has been a substantial body of research on the main programs and strategies of the get-tough movement, and they have, with only isolated exceptions, been found wanting. Just as significantly, the unintended consequences of these approaches have become considerably clearer as evidence mounts about the problems created by large penal populations concentrated among minority populations.

The availability of this growing body of evidence—and the dearth of contradictory studies—has probably not been a definitive force in the waning of the Punishment Imperative, but it has had an important role. If the drop in crime made the experiment’s end possible, and the fiscal crisis made it necessary, then the burgeoning evidence for its failure has made it reasonable. As we will show in chapter 3, grand social experiments develop their own “knowledge,” in the sense that a shared public reality undergirds the energy for the social movement. With regard to the Punishment Imperative, this body of critical studies, now more widely disseminated among the intellectual, opinion-leading public, means that a fledgling foundation is growing for a wholesale rethinking of the idea.

In the 1970s and 1980s, when the Punishment Imperative was in its heyday, what we “knew” about penal policy could fairly be summarized as follows: (1) rehabilitation programs do not work, (2) a small number of highly active law violators are responsible for most crime, (3) the odds of these active offenders being caught and punished are too small, and (4) prisons prevent crime through incapacitation. These were the empirical foundations for the Punishment Imperative, and by the 1980s, they were widely accepted as demonstrably true statements about our penal system, shaping the reforms of the era.

The new evidence—facts and studies that have helped bring about the end of the Punishment Imperative—do not so much contradict these “truths” as they replace them with a different set of more nuanced “truths.” The motivating data for new penological thinking stress a different set of points: (1) carefully designed and implemented correctional strategies can result in significant reductions in rates of recidivism;
(2) the growth in the penal system, especially prisons, has resulted in a series of collateral problems that produce inequality and reproduce injustice in ways that are inconsistent with sound democratic policy; (3) prison populations can be reduced without harming public safety; and (4) the general public supports a penal system that provides opportunities for people who are convicted of crimes to reform and return to society as productive citizens.

Along with this new factual foundation for action has come, predictably, a new set of policies to reflect them. Where once policy reform had to meet a criterion of “toughness,” today the new guiding phrase is “evidence-based.” Policymakers are asked to articulate the empirical foundation for the solutions they offer, which shifts the burden of proof from the heated threshold of harshness to a much cooler, more nuanced foundation of an evidence base. This shift has assigned a premium to programmatic thinking, and in place of legislative action we now see practical program strategies occupying the center of the debate. Ideas that reduce costs, increase rates of success, and support the reform of people who break the law now have an advantage over other ideas, and the shift in the evidentiary foundation of corrections is a key reason this is true.

The Argument of This Book

This book then is about an American idea that took root in the 1970s, rose to dominate discourse and practice through the 1980s and 1990s, and has, as we enter the second decade of the new century, shown distinct signs of having run its course. In the chapters that follow, we explore the dynamics of that major American idea, which we call a grand social experiment in punishment. We describe the sources of this experiment, its main elements, and its most important consequences. If we are right in our argument, then we truly find ourselves at one of those rare, momentous times in history, for after more than a generation of unremittingly punitive penal policy, we have now arrived at a new threshold of what will be normal for the U.S. penal system.